IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 1631 of 2004

PRIVATE BUS OWNERS UNION, PRATAPGARH
V/S
STATE & ORS

Mr. SANGEET LODHA, for the appellant / petitioner

Mr. NM LODHA,A.A.G., for the respondent

Date of Order : 13.1.2005

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI DINESH MAHESHWARI,J.

ORDER

The petitioner, Private Bus Owners Union, Pratapgarh, a registered trade union has raised the grievance that the vehicles of the Members of the petitioner-union were requisitioned by the Regional Transport Officer, Chittorgarh for the purposes of Assembly Elections and vehicles remained in possession and under the control of the State Government from 25.11.2003 to 1.12.2003, but adequate compensation has not been paid. After hearing the parties on 28.9.2004, this Court found that this Court can refer the dispute to arbitration under Section 89 of the Code of Civil Procedure. The attention of this Court was also drawn to the order of a learned Single Judge of this Court dated 27.9.99 in S.B.C.W.P.No.4469/04. This Court after hearing the parties passed the following order:

"D.B. Civil Writ Petition No.1631/2004

Date : 28.09.2004

Hon'ble Mr. Justice N.N.Mathur
Hon'ble Mr. Justice N.K.Jain

Mr. Sangeet Lodha for the petitioner.
Mr. N.M. Lodha, AAG for the State.

In the instant petition, the petitioner Private Bus Owner Union Pratapgarh has raised voice with respect to payment of compensation during the election period. It is urged that they have been paid @ Rs.515/- per day. It is submitted that if minimum, wages payable to them are calculated then it cannot be less than Rs.300/- i.e. Rs.150/- each for driver and khalasi. Besides, they are not given food by the

respondents and the expenditure of the food for the driver and khalasi is also to be borne by the owner.

Mr.N.M. Lodha, learned Additional Advocate General appearing for the respondent submits that proviso to sub-section (2) of Section 161 of the Representation of the Public Act, 1951 provides that the dispute can be settled by way of arbitration. Learned counsel Mr. Sangeet Lodha submits that an application has already been filed for referring the matter to the arbitrator but nothing has been done in this regard so far.

Prima facie, we are of the view that this court under Section 89 of Code of Civil Procedure can also refer the dispute to the arbitration. Mr.N.M.Lodha, learned counsel has invited our attention to the order of learned Single Judge dated 27.9.99 passed in S.B.Civil Writ Petition No.4469/2004. Before we proceed further the parties are directed to formulate proposed terms of the settlement and place the same before the Court on the next date of hearing.

Put up on 04.10.2004.

(N.K. Jain), J. (N.N. Mathur), J."

As this Court directed the parties to formulate proposed terms of settlement, accordingly, today the learned counsel for the petitioner has submitted a proposed settlement formulating five questions, to which learned counsel for the respondent objects.

However, after hearing learned counsel for the parties, on the proposed terms of settlement, we formulate the following questions as the terms of settlement requiring to be referred to the arbitration, as contemplated by the order dated 28.9.04:

(i) Whether the amount of compensation paid to 21 persons mentioned in Schedule-A to the writ petition, for the requisition of vehicles during last Assembly Elections on the dates mentioned in Schedule-A is sufficient compensation? If not, to what compensation, these persons are entitled in terms of Section 161 of the Representation of the People Act, 1951?

(ii) Whether the claim for compensation is within time?

These questions are to be decided by the Arbitrator after giving opportunity to both the parties to produce appropriate material before him to show that the claim is within time, or time barred and the adequacy or otherwise and entitlement of compensation.

Accordingly, this writ petition is disposed of with the directions that the aforesaid questions are referred for adjudication to the

arbitrator.

On the question of name of the arbitrator, with the consent of the parties, the matter is referred to the arbitration of Shri Sunder Lal Mehta, R.H.J.S. (Retd.), at 622 Shiv Marg, Bani Park, Jaipur.

Information of this order be sent to Shri Sunder Lal Mehta. In case, Mr.Mehta is not agreeable for this arbitration, the matter be placed before this Court for appointment of another person as arbitrator. The fees of arbitrator shall be determined by the parties, and the arbitrator mutually, and shall be borne by the parties in equal proportion.

The writ petition accordingly stands disposed of.

( DINESH MAHESHWARI ),J. ( N P GUPTA ),J.

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